

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs July 27, 2004 at Knoxville

**MARSHALL D. JOHNSON v. KEVIN MYERS, WARDEN**

**Appeal from the Circuit Court for Wayne County**  
**No. 13106 Robert Holloway, Judge**

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**No. M2003-02424-CCA-R3-HC - Filed October 25, 2004**

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Marshall D. Johnson appeals from the Wayne County Circuit Court's denial of his petition for the writ of *habeas corpus*, in which he alleges that he is being illegally restrained because the indictment which forms the basis of his three convictions of aggravated robbery is void, and thereby, the convicting court was without subject matter jurisdiction to impose convictions for the offenses. Because we, like the lower court, disagree, we affirm the lower court's dismissal of the petition.

**Tenn. R. App. P. 3; Judgment of the Circuit Court is Affirmed.**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Marshall D. Johnson, Appellant, *Pro Se*.

Paul G. Summers, Attorney General & Reporter; Helena Walton Yarbrough, Assistant Attorney General; T. Michel Bottoms, District Attorney General; and Christine M. Lapps, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

The petitioner's convictions arise from his guilty pleas to three counts of aggravated robbery committed on August 14, 16, and 17, 1999. Each of the three counts charges that

**MARSHALL D. JOHNSON**

on the [specified] day of August, 1999, in Davidson County, Tennessee and before the finding of this indictment, intentionally or knowingly did take from the person of [named victim] certain property, to wit: United States currency of value, by violence or putting [named victim] in fear; the robbery accomplished with a deadly weapon or by the displaying of any article used or fashioned to lead [named victim] to reasonably believe the article to be a deadly weapon in violation of Tennessee

Code Annotated §39-13-402, and against the peace and dignity of the State of Tennessee.

In pertinent part, the Code defines robbery as “the intentional or knowing theft of property from the person of another by violence or putting the person in fear . . . [which is a]ccomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon[.]” Tenn. Code Ann. §§ 39-13-401(a), 39-13-402(a)(1) (2003).

The law in Tennessee is that an indictment must provide “sufficient information (1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy.” *State v. Hill*, 954 S.W.2d 725, 727 (Tenn. 1997). In *Hill*, our supreme court concluded that, although the scienter requirement was not stated in the indictment, the indictment was valid, based upon it (1) satisfying the three aforementioned constitutional requirements, (2) complying with the notice requirements of Code section 40-13-202, and (3) providing a basis for logically inferring the mental element of the crime charged. *Id.* at 726-27. The *Hill* court stressed that indictments should be scrutinized from the vantage point of “common sense and right reason rather than from the narrow standpoint of . . . technicality or hair splitting fault finding.” *Id.* at 728 (quoting *United States v. Purvis*, 580 F.2d 853, 857 (5th Cir. 1978)).

Since *Hill*, the court has often repeated its intention to relax “common law pleading requirements and its reluctance to elevate form over substance when evaluating the sufficiency of indictments.” *See, e.g., State v. Hammonds*, 30 S.W.3d 294, 300 (Tenn. 2000). In *Hammonds*, the court said, “Indeed, *Hill* and its progeny leave little doubt that indictments which achieve the overriding purpose of notice to the accused will be considered sufficient to satisfy both constitutional and statutory requirements.” *Id.*; *see State v. Sledge*, 15 S.W.3d 93, 94 (Tenn. 2000); *Crittenden v. State*, 978 S.W.2d 929, 931 (Tenn. 1998); *Ruff v. State*, 978 S.W.2d 95, 100 (Tenn. 1998).

Similarly, in the present case, the indictment afforded the petitioner clear, understandable notice that he was being charged with a violation of Tennessee law proscribing aggravated robbery. Each count charges that the defendant unlawfully and intentionally or knowingly took money from a victim through violence or putting the victim in fear, which was accomplished with a deadly weapon or facsimile thereof. Each element is alleged in the indictment in plain and concise language. We are at a loss to comprehend how the petitioner finds the indictment deficient, inasmuch as the indictment alleges each element of the offense including the *mens rea*, identifies the crime by statutory reference, identifies the victims, and identifies the dates of the offenses.

Because we are unpersuaded that the lower court erred in dismissing the petition for writ of *habeas corpus*, we affirm.

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JAMES CURWOOD WITT, JR., JUDGE